

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:18-CR-00263-FL-1

UNITED STATES OF AMERICA :
:
v. :
:
TAMARA PERRY MCCAFFITY :
:

FINAL ORDER OF FORFEITURE OF REAL PROPERTY KNOWN AS
11222 EMPIRE LAKES DRIVE AND 648 CRYSTAL BAY LANE

WHEREAS, upon the United States' Motion for a Final Order of Forfeiture and the underlying records in the docket, the Court makes the following findings:

1. On July 17, 2018, an Information was filed against Defendant TAMARA PERRY MCCAFFITY charging the Defendant in Count One with Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. § 1349 [DE-4];
2. The Information gave notice of the United States' intention to seek the forfeiture of the following real property (collectively the "Real Property"), pursuant to 18 U.S.C. § 982(a)(7) as gross proceeds traceable to the Defendant's violation:
 - a. 11222 EMPIRE LAKES DRIVE, RALEIGH, NORTH CAROLINA 27617 ("11222 EMPIRE LAKES DR.");
 - b. 648 CRYSTAL BAY LANE, ORLANDO, FLORIDA 32828, ("648 CRYSTAL BAY LN.");
 - c. 5 ELMRIDGE COURT, DURHAM, NORTH CAROLINA, ("5 ELMRIDGE CT.");

3. The legal description for the Real Property subject to this order is more specifically described as follows:

- a. 11222 EMPIRE LAKES DR., RALEIGH NC 27617 is more specifically described as follows:

All that certain lot or parcel of land situated in or near the City of Raleigh, Panther Branch Township, Wake County, North Carolina and more particularly described as follows:

Being all of Lot 937 in Brier Creek Country Club Phases 22 & 25, as shown on map thereof recorded in Book of Maps 2005, Pages 18-21 (20), Wake County Registry, to which map reference is hereby made for a more particular description.

APN: 0323058

- b. 648 CRYSTAL BAY LANE, ORLANDO, FLORIDA 32828 is more specifically described as follows:

All that certain land situated in Orange County, Florida, to wit:

Lot 4, Waterford Chase East Phase 2, Village E, according to the Plat thereof recorded in Plat Book 55, Page 6, of the Public Records of Orange County, Florida.

APN: 30-22-32-9102-00040

4. A *Lis Pendens* giving notice of the United States' intent to forfeit the following Real Property was filed as follows:

- a. 11222 EMPIRE LAKES DRIVE, RALEIGH, NORTH CAROLINA 27617 was filed with the Wake County Clerk of Superior Court on September 13, 2018, Case No: 18-M-3654;
- b. 648 CRYSTAL BAY LANE, ORLANDO, FLORIDA 32828 was filed on September 11, 2018 as Instrument Number 20180536321 of the Orange County Registry;

5. On October 19, 2018, Defendant entered a guilty plea pleading guilty to Count One, Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. § 1347 [DE-13];

6. As part of the Plea Agreement, Defendant agreed to the forfeiture of the Real Property pursuant to 18 U.S.C. § 982(a)(7) as proceeds of the Defendant's violation and/or as substitute property pursuant to 21 U.S.C. § 853(p) to satisfy a forfeiture judgment in the agreed amount of \$771,269.00;

7. A Preliminary Order of Forfeiture forfeiting the Real Property pursuant to 18 U.S.C. § 982(a)(7) and 21 U.S.C. § 853(p) was entered on February 15, 2019 [DE-29];

8. The Preliminary Order of Forfeiture:

- a. Ordered the forfeiture of the Real Property pursuant to 18 U.S.C. § 982(a)(7) and 21 U.S.C. § 853(p);
- b. Ordered that the forfeiture was final as to the interests of the Defendant pursuant to Fed. R. Crim. P. 32.2(a)(4)(B);
- c. Ordered that any person other than the Defendant claiming any legal interest in the Real Property must file a petition with the Court within the time period for the filing of third-party claims as set forth in 21 U.S.C. § 853(n); and
- d. Retained jurisdiction to enforce the Preliminary Order of Forfeiture and amend it as necessary pursuant to Fed. R. Crim. P. 32.2(e);

9. The Defendant was sentenced and a Judgment was entered on February 15, 2019 [DE-31] and that Judgment incorporated the Preliminary Order of Forfeiture by reference;

10. The United States published notice of this forfeiture action and the intent of the United States to dispose of the Real Property in accordance with Fed. R. Crim. P. 32.2(e), and such publication notified all parties of their right to petition the Court for a hearing to adjudicate the validity of their alleged interest in the Real Property, beginning on February 20, 2019 and continuing for at least thirty (30) consecutive days, on the www.forfeiture.gov website [DE-45];

11. The Real Property is titled as follows:

- a. 11222 EMPIRE LAKES DRIVE, RALEIGH, NORTH CAROLINA 27617, is titled to EDWARD MCCAFFITY and TAMARA MCCAFFITY, husband and wife;
- b. 648 CRYSTAL BAY LANE, ORLANDO, FLORIDA 32828 is titled to EDWARD MCCAFFITY and TAMARA PERRY-MCCAFFITY, husband and wife;

12. The United States sent direct written notice of the Preliminary Order of Forfeiture in accordance with 21 U.S.C. § 853(n)(1) and Rule 32.2(6) to all persons who reasonably appeared to be a potential claimant with standing to contest the forfeiture of the Subject Property in the ancillary proceeding, which included the following persons:

- a. Chase Home Mortgage Corporation;
- b. Chase Home Mortgage Corporation c/o Pennsylvania Secretary of State;
- c. Edward Leslie McCaffity;
- d. Dwayne Gray c/o Matthew W. Buckmiller, Esq.;
- e. Wake County Tax Office;
- f. Wells Fargo Bank N.A., c/o Corporation Service Company;
- g. Wells Fargo Bank N.A., Attention Legal Department;
- h. Coastal Federal Financial Group LLC, Attention Legal Department;

- i. Coastal Federal Financial Group LLC c/o Willard Ross, Registered Agent;
- j. MERS, Attention Legal Department;
- k. MERS c/o The Corporate Company;
- l. Florida Department of Revenue;
- m. Orange County Tax Collector; and
- n. Durham County Tax Office;

[DE-54];

13. Service upon the Real Property was executed as follows:

- a. Upon 11222 EMPIRE LAKES DR., by posting the Preliminary Order of Forfeiture on the property by an agent of the United States Marshals Service on March 4, 2019 [DE-34]; and
- b. Upon 648 CRYSTAL BAY LN., by posting the Preliminary Order of Forfeiture on the property by an agent of the United States Marshals Service on March 14, 2019 [DE-53];

14. The following petitions were filed in relation to 11222 EMPIRE LAKES DR.:

- a. WELLS FARGO BANK [DE-36];
- b. COASTAL FEDERAL CREDIT UNION [DE-40];
- c. DWAYNE GRAY [DE-42];
- d. WAKE COUNTY REVENUE DEPARTMENT [DE-44]; and
- e. EDWARD MCCAFFITY [DE-48];

15. The following petitions were filed in relation to 648 CRYSTAL BAY LN.:

- a. DWAYNE GRAY [DE-42];
- b. EDWARD MCCAFFITY [DE-48]; and
- c. ORANGE COUNTY TAX COLLECTOR [DE-59];

16. The only other petitions filed relate to property other than 11222 EMPIRE LAKES DR. and 648 CRYSTAL BAY LN.;

17. The United States filed a response to the Petitions [DE-66] which indicated that after payment of costs incurred by or on behalf of the United States

Marshals Service (USMS) for the seizure, maintenance, forfeiture and sale of the Real Property, the United States would pay any past due real property taxes as well as the pro rata share of state or local real property taxes from January 1, 2019 through the date of the entry of the Final Order of Forfeiture;

18. The United States' Response also recognized the first lien of WELLS FARGO and the second lien of COASTAL FEDERAL CREDIT UNION on the 11222 EMPIRE LAKES DR. property;

19. The United States' Response indicated that a Settlement Agreement had been reached with DWAYNE GRAY and pursuant to that Agreement, GRAY will be paid the fixed sum of \$115,000.00 from the net proceeds of the sale of 11222 EMPIRE LAKES DR., unless the net proceeds are insufficient to pay GRAY the full sum of \$115,000; then, the remainder of the \$115,000 will be paid out of the net proceeds of the sale of 648 CRYSTAL BAY LN.;

20. Finally, the United States' Response indicated that a Settlement Agreement had been reached with EDWARD MCCAFFITY and pursuant to that Agreement, the United States will pay EDWARD MCCAFFITY one half of the net sale proceeds of 648 CRYSTAL BAY LN, less the agreed amount of \$32,000;

21. On August 19, 2019 this Court entered an order resolving the Petitions [DE-67], allowing CHASE'S Petition and reciting that the Government will recognize the interests of petitioners in the following order of priority:

- a. The costs incurred by or on behalf of the United States Marshals Service for the seizure, maintenance, forfeiture and sale of the

property shall be paid in full in priority to any other claim or interest, as provide by 21 U.S.C. § 881(e)(2)(A)(i).

- b. The United States recognizes and will pay any past-due state or local real property taxes as well as the pro-rata state or local real property taxes owing from January 1, 2019, through the date of entry of a final order of forfeiture.
- c. The United State recognizes the liens of Wells Fargo Bank (as a first lien on the 11222 Empire Lakes Drive, Raleigh, North Carolina property); Coastal Federal Credit Union (as a second lien on the 11222 Empire Lakes Drive, Raleigh, North Carolina property)....
- d. Pursuant to the Settlement Agreement reached between the United States, Dwayne Gray and Edward McCaffity, Dwayne Gray is to be paid the fixed sum of \$115,000.00 from the net proceeds of the sale of the 11222 Empire Lakes Drive, Raleigh, North Carolina property, or to the extent such proceeds are insufficient, then from the net proceeds of the sale of the 648 Crystal Bay Lane, Orlando, Florida property. Edward McCaffity will receive nothing from the sale of the 11222 Empire Lakes Drive, Raleigh, North Carolina property, but shall receive some of the net proceeds of the sale of the 648 Crystal Bay Lane, Orlando, Florida property, as set forth with particularity in the Response to Third Party Petitions [DE-66] and the Settlement Agreement.

22. The interested parties of record have consented to the entry of this Final Order of Forfeiture;

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED that:

1. Pursuant to Fed. R. Crim. P. 32.2(6)(c)(2) and 21 U.S.C. § 853(n)(7), the Preliminary Order of Forfeiture entered on February 15, 2019 [DE-29], ordering the forfeiture of the Real Property pursuant to 18 U.S.C. § 982(a)(7) and 21 U.S.C. § 853(p), is now final;

2. All right, title and interest to the Real Property described in Paragraph 3, above, is hereby condemned, forfeited and vested in the United States of America and the United States has clear title to said Real Property and may warrant good title to any subsequent purchaser or transferee;

3. The United States Marshals Service (USMS) is authorized to dispose of said Real Property in accordance with the law;

4. Upon the sale of 11222 EMPIRE LAKES DR. the proceeds of the sale shall be distributed in the following priority to the extent proceeds are available:

- a. First, to the USMS pursuant to 21 U.S.C. § 881(e)(2)(A)(i), any and all costs and expenses incurred by the USMS in connection with the seizure, maintenance, forfeiture, marketing and sale of the property; escrow fees; insurance costs, if any; commissions, if any; document recording fees not paid by the buyer; title fees; and transfer taxes;
- b. Second, to the WAKE COUNTY REVENUE DEPARTMENT for all unpaid real property taxes due and owing through the date of the entry of this Final Order of Forfeiture; provided, however, that the United States shall not be liable for the payment of state or local property taxes from the date of the entry of this Final Order of Forfeiture;
- c. Third, to WELLS FARGO BANK, the amount of \$391,169.98 as of August 30, 2019 for principal and interest at the contract rate of 4.625 percent, plus a \$45.33 per diem thereafter;
- d. Fourth, to COASTAL FEDERAL CREDIT UNION, the amount of \$101,817.16 as of August 30, 2019 for principal and interest at the on-tract rate of 7.00 percent, plus a \$17.80 per diem thereafter;
- e. Fifth, to DWAYNE GRAY the sum of \$115,000 from the remaining net sale proceeds; provided, however, that in the event the remaining net sale proceeds are less than \$115,000, then the unpaid balance shall be paid from the net sale proceeds of 648 CRYSTAL BAY LN., after first using \$32,000 of EDWARD MCCAFFITY'S one-half

- interest in the net sale proceeds of 648 CRYSTAL BAY LN.; and
- f. Finally, any remaining balance shall be forfeited to the United States and shall be disposed of according to law;
5. Upon the sale of 648 CRYSTAL BAY LN. the proceeds of the sale shall be distributed in the following priority to the extent proceeds are available:
- a. First, to the USMS pursuant to 21 U.S.C. § 881(e)(2)(A)(i), any and all costs and expenses incurred by the USMS in connection with the seizure, maintenance, forfeiture, marketing and sale of the property; escrow fees; insurance costs, if any; commissions, if any; document recording fees not paid by the buyer; title fees; and transfer taxes;
- b. Second, to the ORANGE COUNTY TAX COLLECTOR for all unpaid real property taxes due and owing to the Orange County Tax Collector, for 2018 taxes in the amount of \$5,769.83 plus interest at one and one-half percent per month subsequent to June 30, 2019, and for 2019 taxes in the amount of \$5,731.80 plus interest at one and one-half percent per month subsequent to June 30, 2019, plus the pro rata share of state or local real property taxes owing from June 30, 2019 through the date of the entry of this Final Order of Forfeiture; provided, however, that the United States shall not be liable for the payment of state or local property taxes from the date of the entry of this Final Order of Forfeiture;
- c. Third, one-half of any remaining sales proceeds shall be paid to EDWARD MCCAFFITY, less the agreed amount of \$32,000.00 to be deducted from EDWARD MCCAFFITY'S one-half interest in 648 CRYSTAL BAY LN., which sum shall either be applied to any remaining amounts to be paid to DWAYNE GRAY as provided in subparagraph (d), below, or forfeited to the United States as provided in subparagraph (e), below;
- d. Fourth, to DWAYNE GRAY any amount remaining of the agreed sum of \$115,000.00, only to the extent not satisfied in full from the net sales proceeds of 11222 EMPIRE LAKES DR. as provided in Paragraph 4(e), above;
- e. Finally, any remaining balance shall be forfeited to the United States and shall be disposed of according to law;

6. In the event that 648 CRYSTAL BAY LN. is sold first, the first \$32,000 out of EDWARD MCCAFFITY'S half interest shall be held in escrow by the USMS until it is determined whether the net sale proceeds of 11222 EMPIRE LAKES DR. will be sufficient to pay GRAY the sum of \$115,000;

7. WELLS FARGO BANK may maintain a hazard insurance policy with respect to the property through the date of the USMS's closing of sale, and shall be reimbursed from the net sales proceeds in accordance with its priority for the actual cost of such insurance upon submission to the USMS of proof of premiums paid;

8. Other than those interests recognized herein, no other person or entity, shall have any right, title or interest in the Real Property and any and all liens are hereby released as of the date of the USMS' closing of the sale of each Real Property; and

9. The United States District Court shall retain jurisdiction for the purpose of enforcing this Final Order of Forfeiture.

SO ORDERED, this the 1st day of September 2019.


LOUISE W. FLANAGAN
UNITED STATES DISTRICT JUDGE